THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.2944 of 2006

ORAL ORDER:

It appears, petitioner is the wife of one S.D.Ameer, who was engaged as Khalasi in the second respondent organization. While so, the services of the said workman were terminated with effect from 4.1.2002. Aggrieved by the same, he raised a dispute under Section 2A(2) of the Industrial Disputes Act, 1947 before the first respondent-Labour Court, however, the same was dismissed for default on 8.3.2004. Therefore, he filed I.A.No.154 of 2004 in I.D.No.28 of 2002 under Order IX Rule 9 read with Section 151 of Civil Procedure Code seeking to set aside the default order dated 8.3.2004. The said I.A. was dismissed on merits by order dated 16.6.2005. Aggrieved by the same, the present writ petition is filed.

There is no necessity of going into all the details. It is an admitted fact that the services of the workman were terminated with effect from 4.1.2002. Aggrieved by the same, he raised dispute in I.D.No.28 of 2002 before the Labour Court, however, the said I.D. was dismissed for default on 8.3.2004, thereafter, he filed the present I.A. stating that he was suffering from Jaundice, therefore, he could not contact his counsel for four months and after getting cured, he contacted his counsel and came to know about the default order dated 8.3.2004 and therefore, his absence is neither intentional nor wanton, but due to the above reasons and prayed to set aside the default order dated 8.3.2004. The workman also filed Medical Certificate issued by the Doctor, who treated him.

A counter affidavit is filed by the respondents denying the allegations made by the petitioner and contending that the workman was given sufficient opportunity to advance arguments and at last the matter was posted to 8.3.2004, on which date, neither the workman nor his counsel present, hence, the I.D. was dismissed for default.

However, the Labour Court by order dated 16.6.2005 held that;

> "In fact the petition is dismissed on 8.3.2004. The present petition is filed in the month of June 2004, three months later. This is a petition filed under Order 9 Rule 9 and Section 151 CPC. When the petitioner is invoking Order 9 Rule 9, the petitioner has to adhere to the said provision. Under Order 9 Rule 9, a party is entitled to file a petition within 30 days from the order of dismissal seeking restoration of the petition to file by showing good and sufficient case, which prevented him from attending the Court. But here nearly 90 days after the said dismissal, the present application has been filed. Though provisions of Limitation Act are not applicable for filing a petition under Section 2-A(2) of the I.D. Act or under Section 33-C(2) of I.D. Act, once the petitioner wanted to invoke provisions of CPC, the relevant provisions of CPC will apply for filing a petition under Order 9 Rule 9. 30 days time has been prescribed under CPC. But here the present petition is not filed within 30 days from the date of the dismissal order. Hence the present petition filed under Order 9 Rule 9 is beyond the prescribed time. Apart from it, the presence of the petitioner is not at all necessary on the date of hearing and the advocate can argue the matter on that day. But it seems the said Advocate failed to argue it. It is contended by the counsel that he reported ready on that day, but in fact in the counter affidavit filed on behalf of the respondent it has been contended that neither the counsel nor the petitioner was present. Refuting the said allegation, no affidavit has been filed by the advocate appearing for the petitioner. Hence the arguments of the petitioner's counsel that he reported ready on that matter cannot be taken into consideration. Since the petitioner failed to establish the grounds on which he sought the relief, the petition is liable to be dismissed. I do not think that the petitioner would be bedridden without attending to his normal duties for continuously for three months as he was suffering from vomiting and was anemic. Therefore the point is found in favour of the respondent and against the petitioner."

and ultimately dismissed the I.A. Now it is given to understand that due to

prolonged ill health, the workman died on 27.10.2005 and the wife of the workman filed the present writ petition.

The Labour Court has to adjudicate the matter when both the parties are before it, on merits, and if a party fails to attend on a particular day, it cannot dismiss the I.D. for default. Even otherwise, I am of the opinion that in a case like this, the Labour Court could have taken a lenient view and allowed the I.A. by imposing costs on the workman or on some terms and instead of that, the Labour Court has adopted a pedantic approach and dismissed the I.A. No award can be passed straightaway without giving a finding on merits.

In the facts and circumstances of the case, I deem it appropriate to set aside the impugned order dated 16.6.2005 made in I.A.No.154 of 2004.

In the result, the writ petition is allowed and impugned order dated 16.6.2005 made in I.A.No.154 of 2004 in I.D.No.28 of 2002 is set aside and I.A.NO.154 of 2004 is allowed as prayed for. Further, the Labour Court is directed to take up the I.D.No.28 of 2002 and dispose of the same on its own merits within a period of six months from the date of receipt of a copy of this order.

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C.V.RAMULU, J

Date: 8.2.2007
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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.2944 of 2006

8.2.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.2944 of 2006

Date: 8th February, 2006

Between:

Syed Meharunnisa Begum

.. Petitioner

And

The Industrial Tribunal-cum-
Labour Court, rep. by its Presiding Officer,
Warangal & others.

.. Respondents